

PROPOSED EXECUTIVE ORDER NO. _____

SUITABILITY REQUIREMENTS

FOR GOVERNMENT EMPLOYMENT

WHEREAS the national interests require that all persons privileged to be employed in the Federal Government shall be reliable, of good conduct and character, and of undivided allegiance and unswerving loyalty **To** the United States; and

WHEREAS the national security and welfare require that only persons who have demonstrated integrity, trustworthiness and discretion of the highest order shall be employed in positions of special trust and that the selection of such employees shall be made on the basis of a comprehensive review of their suitability and qualifications to hold such positions; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the Federal Government be adjudged by standards and procedures that are consistent, uniform and comport with the individual's right of privacy:

Now, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States including section 1753 of the Revised Statutes of the United States (5 U.S.C. 1970 ed. 3301 and 3701); the Civil Service Act of 1883 (5 U.S.C. 1970 ed. 1101 et seq.); section 9A of the Act of August 2, 1939 (5 U.S.C. 1970 ed. 333 and 7311); the Act

of August 26, 1950 (5 U.S.C. 1970 ed. 7501 et seq.) and the National Security Act of 1947 (50 U.S.C. 400 et seq.); and as President of the United States, and deeming such action necessary in the best interests of the national security and welfare and in order to protect the rights of citizens seeking employment or employed by the United States, it is hereby ordered as follows:

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Section 1. Revocation of E. O. 10450. Executive Order No. 10450 of April 27, 1953, as amended, is hereby revoked.

Section 2. Definitions. For the purpose of this Order, unless otherwise indicated, the following terms shall have these meanings:

Adjudication: The procedure by which a qualified officer weighs the known facts of an individual's conduct and character and considers all relevant circumstances of that conduct, prior experience in similar cases, and the general nature of the position sought or held, in order to evaluate the probability the individual will perform the duties of the position responsibly and efficiently and to balance that degree of probability against the acceptability of failure.

Adverse Determination: A decision at any level of the adjudication procedure or in subsequent hearings which resolves a doubt against the individual with the result that he or she is denied the right to take an examination for employment, is denied appointment, is suspended from employment either with or without pay, is separated from employment, is disqualified for a Position of Special Trust, or is denied access to classified information.

Agency Head: The principal officer or administrator of a department, agency or other major organization or component of the Executive Branch established by statute or Executive Order.

Allegiance: The devotion or emotional commitment of an individual to a political entity, as customarily found in a citizen or person intending to become a citizen of such entity.

Civilian Employee: All appointive positions in the Executive Branch of the Government of the United States, except positions in the uniformed services (armed forces, commissioned corps of the Public Health Service and commissioned corps of the Environmental Protection Services Administration).

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Complaint Investigation: An inquiry initiated as a result of an allegation or other reasonable suspicion that an employee has committed some violation of law or regulation or otherwise by his or her conduct has raised a question as to whether he or she continues to meet the standards of employment for the particular position held. Such an inquiry may be conducted under the authority of any applicable law or regulation or of this Order or both. While a complaint investigation is not a routine inquiry, the investigative procedures prescribed by this Order will be observed to the extent compatible with the integrity of the investigation, whenever its objectives include determining the individual's suitability for continued employment.

Emergency Waiver: An emergency waiver is a suspension of the investigative requirements of this Order that allows the head of a department or agency to fill a Position of Special Trust in his department or agency for up to 90 days without completion of the prescribed investigative report.

Federal Service: Federal service means employment by any Executive Branch agency including any Executive department, agency or independent establishment of the United States or any corporation wholly owned by the United States. It includes the terms Federal employment, government employment and any and all other terms used to describe employment status within the Executive Branch of the Federal government.

Foreign Affairs: The policies, duties and functions pertaining or giving effect to the relations between the United States and Foreign governments, groups or individuals, and international organizations.

Full Field Investigation: An investigation of an individual's background, conducted in person by qualified investigators, and including interviews with knowledgeable persons and checks of appropriate records including those of appropriate national agencies to cover a sufficient period of

the person's life in order to assure acquisition of information necessary and relevant to a determination of the individual's suitability for the position sought or held.

General Standard Positions: All positions in the Executive Branch of the Government which have not been designated Positions of Special Trust.

Investigation: An inquiry conducted by an authorized investigative organization for the purpose of determining an individual's suitability for employment in the Federal service as provided for in this Order.

Investigative File: The official repository of all relevant investigative material, reports or similar information arising out of a suitability investigation conducted under the authority of this Order.

Investigative Record: Any item, collection, or grouping of information authorized for inclusion in a file, indices, list, register or computer system which relates to a suitability investigation conducted under the authority of this Order which contains the name, or the identifying number, symbol or other identifying particular assigned to the individual upon whom the investigation was conducted and which describes the nature of the investigation, the date of the investigation and the investigatory agency.

Loyalty: An individual's faithful and true allegiance to the U. S. and its constitutional form of government.

National Agency Check: A record check of the Federal Bureau of Investigation's fingerprint and investigative files, the CSC security-investigations index and where appropriate, Defense Central Investigative, Central Intelligence and State Dept. indices and other agencies, as appropriate.

National Interest: All of the lawful interests of the Federal government viewed collectively. The interests of national security and national welfare are specific categories of the national interest.

Personnel File: The record required to be maintained in connection with the employment of an individual in the Executive Branch of the government.

reflecting all significant information concerning any matter relating to the employment of an individual in the Executive Branch of the government. The Official Personnel Folder is the official repository of records and reports of personnel actions effected during an employee's Federal service and the documents and papers required in connection with these actions.

Position of Special Trust: Certain positions within the Federal service which entail duties of such a sensitive nature that the misconduct or malfeasance of an incumbent in any such position could reasonably be expected to result in an unacceptably adverse impact upon the national interest.

Security Determination: A determination, as required by Executive Order 11652, made by a lawfully designated authority of the Federal government, on the basis of prescribed investigation and other relevant available information, as to an individual's trustworthiness for access to classified information or material.

Sensitive Compartmented Information: All information and materials bearing special controls of the Intelligence Community (as defined in Executive Order 11905) indicating restricted handling within present and future intelligence collection programs and their end products for which community systems of compartmentation have been or will be formally established. The term does not include Restricted Data as defined in Section II, Public Law 585, Atomic Energy Act of 1954, as amended.

Significant Adverse Information: Such information, directly relating to the factors to be considered in making a suitability determination set forth in subsection 8(b) of this Order, which could reasonably be expected of itself to adversely influence a suitability determination or prompt the seeking of additional investigation or clarification.

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Suitability: As used in this Order, suitability means the individual's fitness, in terms of character and integrity as distinguished from professional skills or qualifications, for the position sought or held, taking into consideration all relevant aspects of the position including its level of responsibility and sensitivity from the point of view of the national interests.

Suitability Determination: A determination made by the Civil Service Commission or the head of a department or agency of the Executive Branch or his designee, on the basis of investigation prescribed by this Order and other relevant available information, as to an individual's suitability for employment in the Federal service with respect to the appropriate suitability standard set forth in Section 5 of this Order. If the position requires frequent access to Top Secret classified information or involves other access or special duties detailed in subsections 6(b)(ii) thru (vi) of this Order, the suitability determination obviates the requirement for a separate security determination with respect to the clearance for access to such classified information or the eligibility for assignment to such duties.

Suitability Factors: Such factors relevant to a determination as to an individual's suitability for employment in the Federal service, under the standards required by Section 5(a) and (b) which are detailed in Subsections 8(b)(1) and (2) of this Order.

Suitability Standard: The minimum level of personnel fitness and competence, prescribed by this Order, which each civilian officer or employee must meet, according to the nature of the position concerned, to be determined suitable for employment in the Federal service.

Section 3. General.

(a) Purpose of the Order - The purpose of this Order is to establish uniform standards for determining the suitability of individuals for employment in the Federal Government, to delineate authority and responsibilities

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of the departments and agencies in application of the standards, to limit the collection of personal information required in determining suitability for Government employment to that which is relevant and necessary to such determination and which is consistent with the individual's basic right of privacy, and to establish effective oversight to assure that implementation of the policies set forth herein by the departments and agencies is consistent with the interests of the nation and the constitutional and civil rights of the individuals concerned.

(b) Establishment of the Federal Civilian Personnel Suitability Investigation and Adjudication Program - There shall be established a uniform Federal Civilian Personnel Suitability Investigation and Adjudication Program operating under the overall personnel policies and procedures developed by the Civil Service Commission. Such programs in the Central Intelligence Agency, National Security Agency, and the Federal Bureau of Investigation, based on procedures or requirements established by statute or other Executive Order, shall be excluded from those Civil Service Commission regulations and procedures and those provisions of this Order which conflict with such statutes or Executive Orders.

Section 4. Applicability.

Pursuant to the authority of the Act of August 26, 1950, the provisions of that Act are hereby extended to all other departments and agencies of the Executive Branch to the extent that the heads of such departments and agencies shall designate Positions of Special Trust in accord with the criteria of Section 6(b)(1) of this Order. By virtue of the authority of the Constitution and the other statutes cited in the preamble to this Order, standards and criteria for other Positions of Special Trust and for Federal employment generally are hereby established. The procedures

of this Order shall apply, as appropriate, to all civilian positions in the Executive Branch, whether of the competitive or excepted services.

The standards and criteria specified in this Order shall be used in making the determination of trustworthiness required of certain civilian personnel pursuant to Section 6A of Executive Order 11652.

Section 5. Suitability Standards.

The appointment or retention of each civilian officer or employee in any department or agency is contingent upon his meeting one or both of the following suitability standards according to the nature of the position for which he is being considered or in which he is serving:

(a) The overall standard for Government employment is whether an individual's appointment or retention in any position will promote the efficiency of the service.

(b) The standard for appointment or retention in Positions of Special Trust is whether the individual's demonstrated integrity, trustworthiness and discretion is such that his appointment or retention in such a position would be clearly consistent with the national interest.

Section 6. Positions of Special Trust.

(a) General - Certain positions within the Federal service entail duties of such a sensitive nature that the misconduct or malfeasance of an incumbent in any such position could result in an unacceptably adverse impact upon the national interest. These positions, which shall be filled by U.S. citizens only, are designated Positions of Special Trust. It is vital to the national interest that great care be exercised in the selection of individuals to fill such positions. There are two categories of Positions of Special Trust:

(1) National Security: Those activities involving access to classified information or which are directly related to military security, foreign affairs or intelligence including the protection of the government against espionage, sabotage, subversion, assassination and terrorism and any other illegal acts that adversely affect the national defense, such as those activities which are directly concerned with the protection of the Nation from internal subversion or foreign aggression.

(2) National Welfare: Those activities which are directly related to domestic order and the economic and productive strength of the Nation, including critical policy making and law enforcement positions, access to sensitive information critical to the Nation's economic or domestic interest, and access to property or installations that affect public health, safety or economic well being.

(b) Criteria For Designating Positions of Special Trust - Only those civilian positions in the Federal service which meet any of the following criteria shall be designated as a position of Special Trust:

(1) National Security Positions which:

- (i) Require frequent access to Top Secret information;
- (ii) Require access to Sensitive Compartmented Information;
- (iii) Require access to information revealing intelligence sources, methods and analytical procedures;
- (iv) Require access to any classified information which is controlled by special access procedures established by the head of a department or agency;
- (v) Involve personnel investigative duties;
- (vi) Offer the opportunity, through misconduct or negligence, to interfere with or impair vital functions of an agency critical to national security

(vii) Allow the incumbent to make or influence suitability determinations concerning persons having the access or performing any of the duties listed in (i) through (vi) above.

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Positions requiring access to information classified no higher than Secret or Confidential, other than those referred to in subsection (b)(1)(ii) through (vii) above, shall not be designated as Positions of Special Trust positions in that the standard and criteria for employment in such positions are as prescribed in subsections 5(a) and 8(b)(1).

(2) National Welfare Positions which:

- (i) Require access to material or information, the dissemination of which is highly restricted because of its importance to the economic well-being of the Nation;
- (ii) Entail responsibility for formulation or implementation of major plans and policies including enforcement of laws such that malfeasance or nonfeasance whether willful or inadvertant results in significant damage to the national interest that cannot be effectively prevented or corrected;
- (iii) Entail final authority for the recommending or approving the collection, grant, exchange, loan, payment or other use of property or funds of high individual or aggregate value, such that it impacts on national economic policy;

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- (iv) Entail responsibility for making selections, appointments or adverse determinations concerning persons having the access or performing any of the duties listed in (i) through (iii) above.

(c) Designation of Positions of Special Trust -

(1) Authority to Designate: The designation of Positions of Special Trust shall be made only by the heads of departments, agencies or major organizational components established by statute or Executive Order in accordance with the above criteria.

(2) Certification and Redesignation: The heads of organizations referred to in (1) of this subsection with respect to Positions of Special Trust:

(i) shall certify in the records of the organization concerned the validity of the position designation at the time of designating each separate position; and

(ii) shall maintain or cause to be maintained a central record of such positions and annually certify the validity of designation of such positions to the Civil Service Commission and

(iii) shall approve any change in designation.

Section 7. Suitability Investigations.

(a) General - The appointment of each civilian officer or employee in any department or agency shall be made subject to an investigation

conducted for the purpose of developing information relevant to determining
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whether such appointment is in conformance with the applicable standard
specified in section 5 of this Order.

(b) Limits On Investigative Matters - Investigations shall be
designed in so far as is possible to collect only as much information as
is relevant and necessary for a proper suitability determination, to
develop information that is timely and that avoids unnecessary inquiry
into sensitive or private areas of personal behavior, and to report for
use in final suitability determinations only information that is accurate
and as fully corroborated as possible. Inquires which have no relevance
to a suitability determination should not be made. Questions regarding
personal and domestic affairs, national origin, financial matters, and
the status of physical health, fall in this category unless the question
is relevant to the disqualification criteria of section 8 of this order.
The probing of a person's thoughts or beliefs and questions about his
conduct, which have no suitability implications, are unwarranted.

Further, religious beliefs and affiliations or beliefs and opinions
regarding racial matters, political beliefs and affiliations of a nonsubversive
nature, opinions regarding the constitutionality of legislative policies,
and affiliation with labor unions or fraternal organizations are not
proper subjects for such inquiries.

(c) Investigations Concerning General Standard Positions

- Investigations conducted for the purpose of determining the
suitability of an individual for Federal service in a General Standard
Position shall be based exclusively on the suitability standard set
forth in section 5(a), shall be limited to matters relevant to reaching
a determination under that standard, and shall ascertain that no adverse
information exists which would preclude a favorable determination under

that standard, further, see investigation shall consist of a national agency check, including a check of fingerprint files of the Federal Bureau of Investigation and, where appropriate, written inquiries to local law enforcement agencies, former employers and supervisors and references. However, upon the request of the head of the department or agency concerned, the Civil Service Commission may, in its discretion, authorize such less investigation as may meet the requirements of the national security or welfare with respect to per diem, intermittent, temporary or seasonal employees, or aliens employed outside the United States.

(d) Investigations Concerning Positions of Special Trust -

(1) Investigations conducted for the purpose of determining the suitability of an individual for Federal service in a Position of Special Trust, herein after referred to as a Full Field Investigation, shall be based exclusively on the suitability standards set forth in sections 5(a) and (b) of this Order, shall be limited to matters relevant to reaching a determination under those standards, shall develop information positively affirming that the individual's conduct and character are such as meet the standards set forth in sections 5(a) and (b), and shall be completed prior to appointment; provided that when appointment is made prior to completion of the investigation the procedures prescribed in (2) of this subsection are followed.

The scope of investigations for Positions of Special Trust throughout the Executive Branch shall be uniform and shall, as a minimum, include the following unless approval for special scoping has been requested by the head of a department or agency and approved by the Civil Service Commission:

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(i) Verification of date and place of birth and citizenship.

(ii) Check of the subversive and criminal files of the Federal Bureau of Investigation, including submission of fingerprint charts, and such other national agencies as are appropriate to the individual's background. An additional check shall be conducted on those members of the individual's immediate family who are United States citizens other than by birth or who are resident aliens.

(iii) Check of appropriate police records covering the most recent 10 years or since age eighteen, whichever is the shorter period.

(iv) Ascertain the individual's financial status and credit habits over the most recent 5 years.

(v) Residential checks over the most recent 5 years.

(vi) Confirmation of all employment during most recent 10 years and personal interviews with supervisors and co-workers for that period.

(vii) Verification of attendance at all institutes of higher learning and at the last secondary school within the past 5 years.

(viii) Interviews with knowledgeable acquaintances concerning the individual's activities and behavioral patterns covering the most recent 10 years.

(ix) Check of the individual's spouse through the subversive files of the Federal Bureau of Investigation and other national agencies, as appropriate.

(x) A personal interview of the individual.

An investigation, completed with favorable results, conducted in conformance with the foregoing scope, shall be accepted as meeting the investigative requirement for any Position of Special Trust, even though

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a more extensive investigative scope has been authorized for such position by the Civil Service Commission, if the individual concerned subsequent to the completion of the investigation has been continuously employed in any Position of Special Trust for 5 years or more - subject to the provisions of subsection (j) below.

(2) In case of an emergency, a Position of Special Trust may be filled for a limited period by a person with respect to whom the required personal investigation has not been completed if the head of the department or agency personally determines that the waiver of such completion is necessary in the interest of national security or welfare based on the following criteria:

- (i) the position cannot remain unfilled without unacceptably adverse impact upon mission of organization.
- (ii) the applicant/nominee has such unique talent that no other person can fill the position.
- (iii) the priority of the program (assigned personally by head of agency or department) is so high that awaiting completion of investigation will result in program failure. Such determination shall be made a part of the records of such department or agency.

If such position is filled on this basis, the investigation must be requested not later than 3 days from entrance of the employee concerned on active duty and must be completed within 90 days from the date of waiver.

(3) Notwithstanding the limitations specified in subsection (1) above, investigations of applicants for Positions of Special Trust may also include verification of special qualifications for the position involved as may be determined by the head of the department or agency.

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(e) Investigative Expansion or Referral -

(1) Expansion: ~~Should there develop at any stage of an~~ ^{Approved For Release 2002/08/15 : CIA-RDP87B01034R000100030045-3}

investigation information indicating that the employment of any such person may not be consistent with the applicable standard set forth in section 5 the investigation shall be expanded to the extent necessary to enable the Civil Service Commission or head of the department or agency concerned to determine whether the individual is suitable for employment or retention in employment. Further, when significant adverse or questionable information is developed during the course of an investigation, the subject of the investigation, insofar as national security permits, shall be afforded an opportunity to affirm, refute or otherwise explain such information, prior to closing the investigation.

(2) Referral: There shall be referred promptly to the Federal Bureau of Investigation all investigations which develop information that an individual's conduct or activities are such as may fall within the investigative jurisdiction of the FBI.

(f) Investigative Procedures -

(1) Sources of Investigative Information: Persons conducting investigations authorized under this section shall collect information to the greatest extent practicable directly from the subject individual, but are authorized to seek additional information from any other appropriate source, including but not limited to:

- (i) the parent(s) or guardian(s) of the person being investigated;
- (ii) school records;
- (iii) federal, state, and local official government records, including conviction and sentencing information, court proceedings and probation records regarding criminal offenders;

- (iv) employment records;
- (v) medical records relevant to a determination under section 8(b)(2) (iii); and
- (vi) personal acquaintances.

The criminal offender information which the department or agency head concerned or his designee is authorized to obtain under this section includes, but is not limited to, all criminal history relating to arrests, indictments, information, or other formal criminal charges, dispositions, or a reason why no disposition is available, sentencing, and correctional supervision and release.

(2) Notice to the Individual: Prior to initiation of any investigation, the subject of the investigation shall be given written notice of:

- (i) The authority under which the investigation will be conducted;
- (ii) The scope of the investigation including an enumeration of the types of records and files to be checked and the type of individuals to be contacted;
- (iii) The principal purpose or purposes of the investigation;
- (iv) The individuals or organizations that will have access to the information;
- (v) The consequences, if any, of the collection of adverse information;
- (vi) A description of the subject's information rights, including access rights and rebuttal and appeal rights;

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(vii) A description of the protection that the information will receive;

(viii) The effects on the subject, if any, of not providing all or any part of the requested information.

(3) Information to be Released by the Individual - The individual shall furnish a signed personal history statement, fingerprints of a quality acceptable to the Federal Bureau of Investigation and a signed release, as necessary, authorizing custodians of police, credit, education, employment and medical records, to provide record information to the investigative agency.

(4) Investigative Limitations With Respect to Privacy - In conducting investigations under the provisions of this Order, investigators shall:

- (i) Not investigate any case or person except those assigned within their lawful duties;
- (ii) Not interview witnesses where the testimony is likely to be overheard by others;
- (iii) Always present credentials and inform witnesses of the reasons for the investigation; the use that will be made of the witnesses testimony; the eligibility of the testimony for confidential treatment; the effects on him, if any, of not providing all or any part of requested information;
- (iv) Not furnish information, other than necessary identity data, or ask questions in such a manner as to indicate that the investigator is in possession of derogatory information concerning the subject of the investigation;

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- (v) Refrain from using, under any circumstances, covert or surreptitious investigative methods, devices or techniques including mail covers; physical or photographic surveillance; voice analyzers; inspection of trash; paid informants, wiretap or eavesdropping devices;
- (vi) Not investigate any case in which the investigator knows of circumstances which might adversely affect his fairness, impartiality or objectivity.
- (vii) Refrain, under any circumstances, from conducting physical searches of the subject or his property or making uninvited visits to the subject's home.
- (viii) Refrain from using a polygraph in any investigation conducted under this Order except that an executive agency which has a highly sensitive intelligence or counterintelligence mission directly affecting the national security may use the polygraph for employment and screening personnel investigations subject to the provisions of Appendix D of Chapter 736 of the Federal Personnel Manual. All other uses of a polygraph to screen applicants for an appointees to competitive positions are forbidden regardless of whether the polygraph examination is administered by the agency concerned or was obtained by that agency from another source such as an examination given previously by another Federal agency or by a non-Federal agency.

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entering or employed in the Federal Service, including experts and consultants however employed, shall primarily be the responsibility of the Civil Service Commission, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Civil Service Commission. A full report of investigation or notification of satisfactory completion thereof shall be furnished to the department or agency responsible for making the suitability determination.

(h) Investigative Support to Non-Executive Branch Federal Agencies - Legislative, judicial and quasi-governmental agencies, including the Government of the District of Columbia, that require investigations similar to those prescribed in this order may use the investigative facilities of the Civil Service Commission.

(i) Use of Prior Investigations - In order to avoid unnecessary duplication of effort and expense, an agency making a suitability determination pursuant to this Order shall make the fullest possible use of reports of prior investigation, to the extent that such prior investigation was based on the standards, suitability factors and investigative coverage requirements of this Order. If the prior investigation did not comply with this Order, such additional investigation as may be necessary shall be conducted.

(j) Reinvestigation.

(1) Incumbents. Once a person's suitability for Federal Service has been determined under the provisions of this order, he shall not be reinvestigated for the same purpose unless information becomes available

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which raised questions as to whether he continued to meet the applicable standard prescribed by section 5. However, the head of a department or agency authorized to establish Positions of Special Trust may with respect to such positions designate those which shall require re-investigation of the incumbent 5 years after employment, and once each succeeding 5 years, provided that such reinvestigation, in the absence of potentially disqualifying suitability information, includes as a minimum (1) requiring the incumbent to submit an updated statement of personal history to the appropriate office responsible for requesting such investigations, and (2) a review of the statement of personal history together with the personnel file of the incumbent, locally available previous reports of investigation concerning him, and any other locally available appropriate records. A determination shall then be made as to what further action is then appropriate, for example, a check of local police and credit records, a national agency check or an up-dated full field investigation.

(2) Former Employees. A former employee shall be investigated whenever available information raises a question as to whether the individual continues to meet the standard provided by section 5 or there has been a break in his employment by the Federal government greater than 12 months.

Section 8. Adjudication.

(a) Objectives - The objectives of the adjudication procedure shall be to determine whether, on the basis of available information, the individual's employment reasonably can be expected to promote the efficiency of the service and, in the case of a Position of Special Trust, to be clearly consistent with the national interests. The procedure does not purport to predict the individual's future behavior but rather is an effort to assess the probability of future conduct, whether willing or unwilling, deliberate or through negligence, which could

impaired the efficiency of the service or exposed the national interests to hazard or jeopardy. It is an evaluation of risk which seeks to balance the possibility of prejudicial behavior against the consequences of failure in terms of the interests of the agency's mission or of the national welfare or security. Where the nature of the position is such that the consequences of failure are of little national import or are easily reparable, many doubts about an individual's suitability may be resolved in his or her favor. Where the consequences of failure pose a greater hazard to the national interests, however, such as with Positions of Special Trust, a smaller degree of doubt may warrant disqualification.

(b) Reasons for Disqualification -

(1) General: All applicants for or incumbents of positions in the Executive Branch must meet the standard of efficiency cited in Section 5(a). Specifically, an individual shall be disqualified for such employment if his or her conduct may reasonably be expected to interfere with or prevent his or her effective performance in the position sought or held, or if such conduct may reasonably be expected to interfere with or prevent effective performance by the employing agency of its duties and responsibilities. Any of the following factors may be considered a basis for disqualification:

- (i) Delinquency or misconduct in prior employment;
- (ii) Criminal, dishonest, infamous or notoriously disgraceful conduct;
- (iii) Intentional false statement or deception or fraud in examination or appointment;
- (iv) Habitual use of intoxicating beverages to excess;

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(vi) Reasonable doubt as to the loyalty of the person

involved to the Government of the United States;

(vii) Any statutory disqualification which makes the individual unfit for the service.

(2) Positions of Special Trust: An individual shall not be appointed to or retained in a Position of Special Trust unless such appointment or retention meets the standard cited in section 5(b). In addition to the factors specified in section 8(b)(1) above, the following factors shall be considered in determining whether the individual's employment meets the stricter standard for a Position of Special Trust:

- (i) Any facts, circumstances, or conduct which furnish reason to believe that the person concerned may be subjected to coercion, influence, or pressure which could cause him to act contrary to the national interest;
- (ii) Any facts, circumstances or conduct which indicates poor judgment, unreliability or untrustworthiness suggesting that the person concerned might fail to safeguard sensitive information, deliberately or inadvertently;
- (iii) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the person concerned, with due regard to the transient or continuing effect of the illness and the medical findings in such case;

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- (iv) Wanton or reckless disregard of public law, statutes, Executive Orders or willful disregard of security regulations;
- (v) Refusal or intentional failure to complete required personal history statements or security forms, or otherwise failing or refusing, in the course of an investigation, interrogation, or hearing, to answer, or to authorize others to answer, any pertinent questions regarding the matters set forth in subsection 8(b)(1) and (2) of this section or otherwise relevant to determining suitability for employment in the Federal service; or
- (vi) A background which cannot be verified sufficiently to permit a positive demonstration of trustworthiness.

(c) Considerations in Weighing Evidence -

(1) General Guidelines:

While equity requires a degree of uniformity in the adjudication of individual cases, assuring fair and consistent evaluation of circumstances from one situation to the next, each case must be assessed on its own merits, taking into consideration all relevant facts, prior experience of similar cases, the nature of the position involved, including its level of responsibility and sensitivity, and the acceptability of risk. All information of record, both favorable and unfavorable, must be considered, and assessed in terms of completeness, relevance, seriousness, recency, and overall significance.

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Any decision must be a common sense one based on a demonstrable relationship between the facts of the case and the standards cited in Section 5.

(2) Factors to be Considered:

Although there are certain circumstances which, in themselves, are obviously disqualifying, such as the use of a false identity or the various statutory restrictions on employment, adjudication of most forms of conduct must include consideration of all pertinent mitigating or aggravating factors, including the following:

- (i) the nature of the position involved, including the level of responsibility and sensitivity;
- (ii) the nature and seriousness of the conduct;
- (iii) the circumstances surrounding the conduct;
- (iv) the frequency and recency of the conduct;
- (v) the age of the individual, if the activity was an adolescent;
- (vi) contributing social or environmental conditions;
- (vii) the voluntariness of the individual's participation;
- (viii) the absence or presence of rehabilitation or effort toward rehabilitation.

(3) Additional Factors to be Considered with regard to Position of Special Trust:

- (1) Refusal by an applicant for or an incumbent of a Position of Special Trust to furnish or to authorize others to furnish information deemed necessary and

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relevant to a determination of his or her suitability for the particular position may warrant an inference that the individual's employment cannot be found to be clearly consistent with the national interests.

- (ii) An individual employee who recognizes that he or she has become involved in an incident or situation, whether by virtue of some misconduct or indiscretion on his or her part which could adversely affect the national interests, and who promptly reports the matter to appropriate authority, shall receive a sympathetic response. To the extent consistent with applicable law or regulation and other criteria of this order, the individual's voluntariness and candor in providing such information shall be considered as a mitigating circumstance and, as appropriate, evidence of a willingness to rehabilitate.

(4) Factors not to be Considered:

- (i) Criminal history information which does not show final disposition of a charge must be investigated further to ascertain the disposition and reasons therefor. No adverse determination shall be made except on the basis of information which is as complete as circumstances allow.
- (ii) No adverse determination shall be made on the basis of how an individual has exercised his First Amendment rights, which include but are not limited to, religious and political beliefs, freedom of speech and of the press, and freedom of assembly and petition. Such factors are

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deemed irrelevant, in the absence of any indication of violation of law, in which case it is the illegal activity and not the mere exercise of right which becomes relevant.

(d) Timely Adjudication - Adjudication should be completed in a timely fashion and in no event more than 90 days after the receipt of the final investigative report.

(e) Notice to the Individual - The individual shall be informed of the completion of any investigation conducted pursuant to this Order and shall be informed of the final suitability determination.

Section 9. Due Process and Adverse Determination Procedures.

(a) Due Process Policy - No person may be denied eligibility for appointment or appointment in the Federal service or finally removed from a position in the Federal service, competitive or excepted service, by the Civil Service Commission or the head of a department or agency unless he has been afforded such due process as is provided for in this section.

(b) Applicants

(1) No person may be denied eligibility for appointment or appointment in the Federal service, competitive or excepted service, by the Civil Service Commission or by the head of a department or agency for failure to meet the standards prescribed by section 5, unless the person has been given:

(i) a written statement of the reasons upon which such denial is to be based in sufficient detail to afford an opportunity to respond and offer comments or

other evidence relative to the issues;

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- (iii) a letter of notification of the determination which, if adverse, shall cite the specific reasons upon which the determination is based; and
- (iv) a written notification of the right to appeal the adverse determination to the Federal Employee Appeal Authority.

(c) Incumbents

No person may be finally removed from employment, competitive or excepted service, by the Civil Service Commission or by the head of a department or agency for failure to meet the standards prescribed by section 5 unless appropriate Civil Service removal procedures have been followed for those persons in the competitive service or the established agency and appropriate Civil Service Commission removal procedures have been followed for those persons in the excepted service, except that when the head of the agency determines that the protection of national security interests so require the provision of section 10 shall be applied.

Section 10. Procedures Concerning Positions Which Involve National Security

Interests. In furtherance of the objectives of the Act of August 26, 1950 (5 U.S.C. 7531, et seq.), whenever the continued employment of an individual in the Federal service, or his access to classified information, is not consistent with national security interests, the head of the agency shall take appropriate action in accordance with the following procedures.

(a) Suspension from employment or access to classified information.

The head of a department or agency shall, when deemed necessary to the national security, suspend from employment any civilian officer or employee, competitive or excepted service, or shall suspend the individual's access to classified information, provided that, to the extent that such agency head

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determines the national security permits, the employee shall be notified of the reasons for the suspension and within 30 days after such notification any such person shall have an opportunity to submit any comments or other evidence relative to the issues. However, within 120 days, if the determination is adverse, the head of the agency shall take further action under one of the following procedures.

(b) Removal from employment or revocation of security clearance.

If the head of a department or agency, based on the circumstances of the case, determines action should be initiated to finally remove an individual from employment or to revoke the individual's clearance for access to classified information, he shall afford the individual the following:

(i) a written statement of the reasons upon which such removal or revocation of clearance for access to classified information is to be based in such detail as national security permits and as would afford him an opportunity to respond and offer comments or other evidence relative to the issues;

(ii) a reasonable opportunity to make such response;

(iii) after he has made a response, the form or sufficiency of which may be prescribed by regulations issued by the Civil Service Commission or the head of the department or agency concerned, an opportunity to appear personally before the Commission or the head of the department or agency concerned or appropriate designee for the purpose of supporting his suitability for retention in the position concerned, or eligibility for clearance for access to classified information and to present evidence in his behalf;

(iv) a reasonable time to prepare for that appearance;

(v) an opportunity to be represented by counsel;

orally or through written interrogatories on matters relevant to his suitability for retention in the position concerned or eligibility for clearance;

(vii) a review of his case by the agency head or his designee, before a determination adverse to the employee is made final; and

(viii) a written notice of the final decision in his case which, if adverse, shall specify whether the commission or the head of the department or agency found for or against him with respect to each allegation in the statement of reasons.

The employee concerned shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the employee relating to the controverted issue except that any such statement may be received and considered without affording such opportunity in the circumstances described in either of the following instances:

(ix) the head of the department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of this identity would be substantially harmful to the national interest.

(x) the head of the department concerned or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the head of the department or such special designee has determined that failure to receive and consider such statement would, in

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view of the nature of the position involved, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (1) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (2) due to some other cause determined by the head of the department to be good and sufficient.

Whenever procedures under paragraphs (ix) or (x) of this subsection are used (1) the applicant shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits, (2) appropriate consideration shall be accorded to the fact that the applicant did not have an opportunity to cross-examine such person or persons, and (3) a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

(c) Reassignment to a position which does not involve national security interests. Nothing in this order shall be deemed to limit or affect the responsibility and authority of any head of a department or agency when, in his absolute discretion, he deems it necessary in the interest of national security to reassign a person to a General Standard Position from a Position of Special Trust (National Security) provided that the reassignment is (1) to a position of the same grade, (2) comparable duties and (3) within the commuting area of the position from which the person is reassigned or, as appropriate, within the area of the agency headquarters. In all such reassignment cases the reassignee shall be given:

(1) a written statement of the adverse information upon which the reassignment is to be based in such detail as national security permits and

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in sufficient detail to afford an opportunity to respond and offer comments or other evidence relative to the issues;

(2) a reasonable opportunity to make such a response;

(3) a letter of notification of the decision, if reassignment is decided, which shall cite the specific reasons, to the extent national security permits, upon which the decision is based.

(d) Reserved Authority Nothing in this order shall be deemed to limit or affect the responsibility and powers of the head of a department or agency to deny or revoke access to a specific category of classified information if the security of the nation so requires. Such authority may not be delegated and may be exercised only when the head of a department or agency determines that the procedures prescribed in section 9 or subsections (a)(b) or (c) of this section cannot be invoked consistently with the national security and such determination shall be conclusive.

Section 11. Reinstatement, Restoration to Duty and Re-employment.

Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies in accordance with section 10 of this order shall not be reinstated or restored to duty or re-employed in the same department or agency and shall not be re-employed in any other agency or department, unless the head of the department or agency concerned finds that such reinstatement, restoration or re-employment is consistent with the standards of section 5a and b; such findings shall be made a part of the records of such department or agency. However, no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Commission that such person is eligible for such employment.

Subsequent to Favorable Suitability Determination.

Whenever there is developed or received by any department or agency information indicating that the retention of any civilian officer or employee in the Federal Service may not be consistent with the standards set forth in sections 5(a) and (b), such information shall be forwarded to the head of the department or agency concerned or his designee who, after such investigation as may be appropriate, shall review or cause to be reviewed the adverse or questionable information. If after such review, it is the determination of the head of the department or agency that the retention of the person concerned may not be consistent with the appropriate standard(s) set forth in section 5(a) or (b), he shall initiate action under the provisions of section 9 or 10, as appropriate.

Section 13. Program Management.

a. General Policy Oversight - Within the Executive Office of the President, the National Security Council and the Office of Management and Budget shall exercise oversight of the Civil Service Commission operation of the Federal Personnel Suitability Investigation and Adjudication Program and shall be responsible for providing policy guidance concerning that program and shall effect the necessary oversight needed to assure that implementation of the policies set forth herein by the departments and agencies is consistent with the interests of the nation and the constitutional and civil rights of the individuals concerned. A program directive shall be issued by the Civil Service Commission within 90 days of the effective date of this order.

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b. Responsibilities of the Departments and Agencies -

(1) Department and Agency Systems In furtherance of the Federal Civilian Personnel Suitability Investigation and Adjudication Program the head of each department and agency established by statute or Executive Order shall be responsible for maintaining a centrally managed personnel suitability, adjudication and review system to insure that the employment and retention of each civilian officer or employee, in the competitive or excepted service, is consistent with the suitability standards of this order.

(2) Implementing Regulations: The heads of the departments and agencies shall, within 90 days of the effective date of the directive cited in subsection (a) of this section, issue appropriate regulations implementing the policies and procedures of this Order.

(c) Standardized Qualifications and Training of Program Personnel: The Civil Service Commission, in coordination with other appropriate agencies, shall prescribe minimum standards for the selection and training of Federal personnel investigators, adjudicators and supervisory personnel in these activities.

(d) Index of Investigations:

(i) In order to avoid unnecessary and duplicative investigation there shall be established and maintained in the Civil Service Commission an index covering all persons as to whom personnel suitability investigations have been conducted under this order by the Commission or any department or agency of the Executive Branch. The index shall contain the name of each person investigated,

adequate identifying data concerning such person, identification of the department or agency which has conducted an investigation concerning the person considered, or has suspended or terminated the employment of such person under the authority granted to the heads of departments and agencies by or in accordance with this order or said Act of August 26, 1950.

- (ii) The heads of all departments and agencies shall furnish to the Civil Service Commission information as prescribed by the Commission appropriate for the maintenance of this index.

(e) Control, Release and Use of Investigative Reports:

- (i) Control of Reports - Reports of investigation developed for the purpose of this order shall, upon rendering of the final determination, be filed at a place designated by the Commission or the head of the department or agency which conducted the investigation, as the case may be, under conditions which will protect the privacy of the persons concerned and the interests of the nation. The reports and other investigative material and information developed by investigation conducted under this order shall remain the property of the agency which conducted the investigation.
- (ii) Release of Reports - Access to and release of such reports will be afforded under procedures prescribed by

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the investigative agency concerned in accordance with
Executive Order 11652, the Freedom of Information
Act, the Privacy Act of 1974 and other applicable laws,
rules and regulations.

(iii) Use of Reports - Except as otherwise authorized by
law or Executive Order such reports shall be used only
to (1) determine an individual's suitability for Federal
Service as provided for in this Order or (2) eligibility
for access to classified information; except that such
reports may be used to compile management and statistical
information necessary for the effective management of the
Federal Civilian Personnel Suitability Investigation and
Adjudication Program. Such reports, or information from
them, shall not be used for the purpose of determining an
individual's eligibility for promotion, selection for
training or qualification for assignments not involving
Positions of Special Trust.

(iv) Disposal of Investigative Reports: An investigative
report prepared solely for a General Standards Position
shall be destroyed one year after a decision is
made to employ the individual or within 5 years after an
adverse determination is made. An investigative report
prepared for a Position of Special Trust shall be
destroyed 15 years after the individual leaves employment
or 15 years after a decision is made to deny examination
or appointment.

(v) Retention of Reports - Reports shall be maintained with only such information as is necessarily relevant and timely to accomplish the objectives of this order and sufficiently corroborated to assure accuracy. Reports concerning incumbents will be audited at least every five years to allow agencies to purge information that is no longer timely. In conformance with the Federal Records Act and other statutes and orders governing record retention, agencies will adopt and publish purge schedules for all reports compiled under this order to promote the retention of necessary relevant and timely information.

(f) Standard Forms: In order to avoid unnecessary proliferation of forms, the Civil Service Commission, in coordination with other appropriate agencies, shall develop and prescribe standard forms which shall be used uniformly by all departments and agencies in implementing the Federal Civilian Personnel Suitability Investigation and Adjudication Program to include personal history statements, privacy statements, release authorizations, investigative requests, investigative reports, testimony vouchers, adjudicative work sheets, suitability determination memoranda, suitability determination records, and notification statements to the subjects of investigations.

(g) Clearing House for Program Management Information: The Civil Service Commission, operating under the guidance of the Executive Office of the President shall, establish a clearing house for information vital to effective program management such as legislative initiatives

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and hearing, review and administrative hearing decisions and similar matters.

(h) Program Review: In order to assure full and continuing compliance with the provisions of this order, the Civil Service Commission, with the cooperation of the agencies and departments, shall effect continuing review of the manner in which the order is being implemented throughout the Federal Government and shall submit to the Executive Office of the President for review by the National Security Council and the Office of Management and Budget an annual report with recommendations to correct any deficiencies in the program which are inconsistent with the national interests or rights of this individual under the Constitution, the laws of the United States, or this Order. In addition, the Civil Service Commission shall develop and prescribe statistical reporting procedures designed to facilitate analysis of the effectiveness of the investigative and adjudicative processes of this Order.

(i) Annual Certification: In addition to the annual certification required by section 6(c)(2)(ii) of this Order, each department and agency shall make an annual report to the Civil Service Commission of the waivers granted under section 7(d)(2) of this Order and such information shall be included in the report cited in (h) above.